

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

ROBERT SAMPSON,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS,

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CIVIL ACTION NO. 2:22-cv-05120-JMA

DECLARATION OF ROBERT SAMPSON

I, Robert D. Sampson, make the following declaration upon personal knowledge:

FACTS

1. I have successfully completed three out of four years of medical education at Stony Brook's Renaissance School of Medicine, and I am approximately 40 weeks away from completing medical school.

2. In July 2021, I completed third-year clinical rotations. My preceptors spoke positively of my clinical performance. My preceptor's comments are attached as Exhibit 1-A.

3. I am also student in good standing in Stony Brook's College of Business where I have a 4.0 GPA.

4. I have achieved these accomplishments as an individual with Attention Deficit Hyperactivity Disorder ("ADHD") and learning disabilities that have required a lifetime of accommodations and mitigating measures so that I could be where I am today.

5. I have always had to work harder than my peers without disabilities but I am driven by the example of my grandfather who was an inventor, my father who is a surgeon, and my mother who is a dentist. I admire them all greatly and want them to be proud of me.

6. Due to speech articulation problems, I began years of speech and language therapy at the age of four. In elementary school, my mother read assignments to me because reading comprehension and focus were already challenging for me at that age.

7. My teachers consistently noted my struggles with attention, focus, and reading. For example, my first-grade teacher documented and worked with me on difficulty focusing, completing tasks, following written instructions, and writing equations correctly. My second-grade teacher noted that my difficulty in focusing caused me to struggle with comprehension. Likewise, my fifth-grade teacher noted that my grades were impacted by my inability to complete assignments. My sixth-grade teachers also noted that my susceptibility to distraction interfered with my ability to complete assignments.

8. During my K-12 education, I needed both tutors and a reading specialist and by the time of my graduation from high school, I had worked with no less than 24 different tutors. I needed these tutors because my learning was not happening in the classroom. It was not unusual to devote more than ten hours a week to tutoring in order to mitigate my disabilities. During high school, I sometimes met with as many as three separate tutors in a single afternoon. Critically, tutors and my parents taught me through verbal interaction because neither reading nor lecture formats were accessible for me. I did not read text books. Instead, my mother read me school texts and I relied on audio recordings of material. Whenever possible my mother created games to help me learn through significant repetition. It was through an airplane game my mother invented that I learned spelling and multiplication tables because I was not able to learn by reading and studying as did my peers

9. In college, I avoided classes with heavy reading and my grades varied widely because the impact of my disabilities presented more of a barrier in classes that required timed

performance and significant reading and writing. I simply did not read text books or other books. I learned through tutors who engaged with me in discussions about material, through videos, audio recordings, Cliff Notes, Spark Notes, and repetition. I also avoided large lecture-hall style classes that had timed multiple-choice exams. Throughout my education, I was typically the last student left in any exam room. When required to take multiple-choice exams, I routinely ran out of time and scored poorly. I therefore sought out classes that assessed performance based on projects and essays, rather than on timed assessments. At University of Virginia, to fulfill a non-western perspectives requirement, I opted to take an African dance course, even though dancing was far outside my comfort zone, in order to avoid the other options to fulfill the requirement that requirement significant reading and writing.

10. In college, I began using a live scribe pen with which I took lecture notes on special paper and the live scribe pen would audio record lectures and link the recordings to the timing of my notes. In this way I was able to re-listen to audio material repetitively. I continued to work extensively with tutors who relied on extensive Socratic interaction, talking me verbally through material that other students were learning by reading or listening to lectures. A tutor who recognized that I knew the material but struggled to show what I knew when tested recommended I receive formal testing because of what he saw as clear learning differences and challenges that made reading laborious and slower than my peers.

11. In test taking I have experimented with multiple strategies to get around my inability to read and comprehend quickly enough. First, I have always devoted far beyond normal time for test preparation. I relied on extensive test preparation with multiple modalities and multiple test preparation companies. I completed what to my peers was an excessive amount of practice tests, again far beyond what my peers completed. I also utilized a system where I read

the question prompt and then the answer choices and attempted to answer questions without reading the material preceding the question prompt if at all possible. While this strategy often worked on standardized tests, this strategy simply does not work on NBME tests.

12. In my daily life I have a host of work arounds or mitigation strategies to compensate for my disabilities. I rely on extensive calendars that chunk tasks into smaller pieces. I rely on siri and related voice-to-text applications to dictate both texts and emails. I have never read for pleasure and will avoid reading unless there is no way around it. On any given day, I take in most of my information by video or audio. When I am required to read, I read and reread in order to derive meaning and maintain a working memory of the main idea of sentences and paragraphs. When I need to learn, I do so by multimodal interaction and repetition.

13. In 2013, I underwent neurocognitive testing that showed the disabilities I had been trying to mitigate my whole life.

14. For me, the diagnoses offered an explanation as to why I learned and performed differently than my peers. At first, my diagnoses felt like weakness; a feeling I now regret. I had not had any role models with disabilities and I worried that people would look down on me because of my disabilities. I was harsh on myself for what I viewed as my personal failures to overcome and perform. I hoped that despite my disabilities I could succeed in pursuing my dreams. Since I have had no choice but to acknowledge my disabilities, my family has begun to speak more openly about disabilities, including a family history that is strongly suggestive of many close family members with dyslexia.

15. As the result of supportive parents, a host of tutors, exhaustive preparation, heavy repetition, dedication, work ethic, and mitigating measures, I nonetheless earned admission to and matriculated at Stony Brook's Renaissance School of Medicine.

16. When I began medical school on August 12, 2015, I hoped that the mitigating measures I had relied on for a lifetime would be sufficient to overcome the challenges caused by my ADHD and learning disabilities. While I passed all of my classes, I was unable to demonstrate my knowledge of the material without accommodations.

17. During orientation, my classmates and I were advised that the only requirement for progressing from year to year and successfully completing medical school, was passing all of our classes. The Power Point presentations at orientation stated that the classes in the medical school were Pass/Fail.

18. To date, I have passed all of my medical school classes. While many of my peers used study groups to prepare for tests and learn material, I simply was not able to benefit from study groups because I could not keep up with the speed of progression that was routine for my classmates. Instead, my father who is himself a doctor and to whom I owe extraordinary gratitude tirelessly devoted countless hours to talking me through material so that I could learn through interaction, discussion, and repetition.

19. Although I have passed all of my classes, I did so despite not having the time to finish reading all of the questions on the examinations and not being able to demonstrate the true extent of my knowledge of medicine. The mitigating measures that I relied upon and utilized throughout my education did not ameliorate the impact of my impairments to sufficient degree to allow me to demonstrate on exams the full extent of my skill and knowledge. For medical school exams and later the United States Medical Licensing Examination (“USMLE”), I tried reading the question prompts and then the answer options, but my reading and reading comprehension were simply not fast enough and the information in the question vignettes could not be skipped. I

then tried reading the question prompt and guessing the answer before reading the answer choices but for the same reasons, this strategy also did not work.

20. After I passed all of my first-year classes, Stony Brook approved me to continue on to my second year of medical school.

21. The USMLE is a three-step test administered by an outside entity called the National Board of Medical Examiners (“NBME”). Although all allopathic physicians must pass each step of the USMLE to gain licensure, when and even if medical students need to take each part of the three-step test varies from medical school to medical school. Stony Brook, for example, requires that its medical students pass Step 1 and Step 2 Clinical Knowledge to be conferred a medical degree.

22. I applied for testing and other accommodations from Stony Brook’s Disability Support Services which is now called Student Accessibility Support Center during my second year of medical school.

23. Stony Brook’s Student Accessibility Support Center received my paperwork, conducted an interview and concluded that I require accommodations and approved me to begin receiving time and half (50% additional time) on all testing.

24. Following the implementation of extended time in medical school, I was able to read and answer more questions on examinations with the result that I received improved scores that more accurately reflected my working knowledge of the material.

25. Due to requirements placed on me by my medical school, I registered to take the USMLE Step 1 earlier than my classmates.

26. On or about April 1, 2017, I filed a request for accommodation with the NBME and had no choice, unlike my classmates, but to wait for the NBME’s accommodation decision.

In the meantime, I was not permitted to continue with medical school classes and was forced to take a leave of absence.

27. I furnished the NBME with substantial documentation supporting my need for accommodations, which included two neuropsychological evaluation reports, a medical report from my psychiatrists, documentation of my prior accommodations in educational settings, standardized testing score reports, and educational records.

28. The NBME rejected my first request for accommodations on June 13, 2017.

29. Thereafter, I submitted numerous requests for accommodations and appeals, but NBME repeatedly denied my requests for accommodations.

30. From 2017 through 2019, the NBME rejected my requests for accommodations six times despite the documentation of my disability and the fact that Stony Brook itself stated that I needed the testing accommodations I requested for the USMLE Step 1 exam.

31. Submitting each request for accommodation was an enormous task that felt like baring my greatest weaknesses to strangers and each rejection from the NBME was both terrifying and humiliating – to finally have the courage to disclose my disability and ask for the help I needed only to be turned away left me emotionally struggling, depressed, anxious, and hopeless. I persisted because I want so much to be a doctor.

32. Studying for the USMLE required enormous time and emotional commitment, far beyond the time required for my peers. I studied as much as 16 hours a day. In order to go over just a forty-question practice exam, would often take me more than ten hours. I had tutoring and one-on-one support. I enlisted help from friends and family. It felt during the times I was studying like I lived in a different world than friends, family and even other medical students, like I was a zombie. The extraordinary hours of study far beyond what was required for others,

resulted in me developing back pain that required special cushions, wrist injuries requiring special devices and treatment, and neuropathy. None of this sheer commitment and effort could overcome my disabilities.

33. In January 2020, to comply with Stony Brook's demands after the NBME rejected my requests for accommodations on the USMLE, I took Step 1 of the USMLE without the accommodations I needed. I did not have the opportunity to read and understand all of the questions. Consequently, I was unable to substantively complete a significant portion of the exam and, as the clock ran out, resorted to filling in multiple-choice bubbles without having read the questions. I failed the exam.

34. In August 2020, I underwent additional comprehensive testing by Dr. Jeannette Wasserstein, a clinical neuropsychiatrist and assistant clinical professor of psychiatry at Mt. Sinai Medical School.

35. This new evaluation underscored my need for extended testing time. Dr. Wasserstein administered a battery of tests and concluded that I have ADHD and learning disabilities that require accommodation. The tests showed both my reading rate and reading fluency as being significantly deficient. My reading rate on difficult material was at the lowest percentile. When answering questions within the normal time limit on one inventory, for example, I was able to answer only 12 of 38 questions in the time allotted. With double time, I was able to answer all questions, and answered all but one question correctly.

36. Dr. Wasserstein found that I have severely impaired sustained visual attention which would be expected to impact performance on lengthy standardized exams. She also found that I have significant difficulty with tasks that rely on visual processing and would be even more pronounced under timed testing conditions.

37. Dr. Wasserstein diagnosed me with significant reading comprehension issues resulting from the combination of diagnoses including complex reading disorder with dysgraphia with impaired visual processing and other memory and learning deficits. She found clear deficits in sustained attention, executive function, memory and learning ability and visual-motor integration. These were absolute deficits as compared to the general population.

38. Dr. Wasserstein strongly advised that double time was needed as an accommodation in testing as well as extended breaks between test segments.

39. Stony Brook's Student Accessibility Support Center discussed my test results with Dr. Wasserstein and granted me double time on testing.

40. In April 2022, I applied to the NBME for accommodations on the USMLE Step 1. The accommodations I requested included 100% extended time over two days of testing and additional break time. Annexed to my request for accommodations was Dr. Wasserstein's neuropsychological evaluation report. With this request, coupled with my prior requests, I have submitted the following documents supporting my request for accommodations:

- a. Report of Suzanne Michels, Ph.D.;
- b. Report of Thomas Aronson, M.D.;
- c. Letter from Andrew Lam, M.D.;
- d. Letter from Stony Brook Learning Specialist;
- e. Letter from Christopher Heedles, LMSW, Supportive Education Counselor at Stony Brook Disability Student Services;
- f. Certificate of Prior Test Accommodations dated March 27, 2017, and signed by Stony Brook;
- g. Report of NBME Shelf Exam scores from Stony Brook University;
- h. MCAT score report of January 1, 2015;
- i. ACT Score Report from June 2008;
- j. PSAT score report from 2007;
- k. SAT Score Reports from 2005 and 2008;
- l. Report of Administration of the Otis-Lennon School Ability Test (OLSAT) dated May 28, 1999
- m. Letter from Jan Serrantino, Ed.D, dated June 2017.;
- n. Letter from Shelley and Steven Sampson including list of tutors;
- o. Letter from Jan Serrantino, Ed.D. dated October 9, 2017;

- p. Letter from Thomas Aronson, M.D. dated September 6, 2017;
- q. Letter from Allison Anderson dated August 10, 2017;
- r. Letter from Stony Brook Learning Specialist, Linda De Motta, dated February 2018;
- s. Letter from Thomas Aronson, M.D. dated June 12, 2018;
- t. Report of Jeanette Wasserstein, Ph.D., MBPP.

41. In a letter dated June 1, 2022, the NBME denied my most recent request for accommodations.

42. The USMLE Step 1, is a significantly more reading intensive examination than either the MCAT or SAT. The USMLE requires reading lengthy reading passages, often referred to as “vignettes,” which are longer and more complex reading passages than found on the MCAT or SAT. It is impossible to pass Step 1 without reading the vignettes, the question prompts, and the answer options. Because of this, the mitigation and compensatory strategies I utilized on prior tests such as the SAT and MCAT were not effective for Step 1.

43. I am at imminent risk of dismissal from medical school because of my inability to obtain accommodations and take and pass Step 1. Once dismissed from medical school, I will no longer be eligible to take the USMLEs at all and despite years of work and sacrifice, my career in medicine will be over.

44. I am about to lose everything I have dreamed of and worked for.

45. I declare under the penalties of perjury that the foregoing is true and correct.

DATED: 9/19/22


Robert Sampson

EX. 1-A

Course Name: "Introduction to Clinical Medicine - Odd Year"

Robert had an excellent performance in the ICM course. During his clinical bedside experiences, he demonstrated an excellent ability to gather relevant patient information and develop a differential diagnosis and work up plan. His medical knowledge and ability to assimilate this knowledge was impressive for his level of training and he always attempts to incorporate his classroom learning to the care of his patients. Finally, his communication skills were polished, his write ups were stellar and he was always professional. He had an excellent performance in small group, consistently contributing positively to the group discussion. His performance on the end of course OSCE was also excellent. Robert will transition well into his clerkship year.

Course Name: "Medicine"

NARRATIVE DESCRIPTION OF CLINICAL PERFORMANCE:

Robert Sampson completed his medicine clerkship at Stony Brook University Medical Center. Robert had an overall very good clinical performance during the clerkship. The faculty and house staff noted that Rob had a solid fund of knowledge and generated good differential diagnosis—often thinking outside the box. Faculty and house staff consistently noted that Robert asked intelligent questions. He demonstrated great enthusiasm for learning and improving clinical knowledge and patient care skills; to this end, he read the medical literature and shared new knowledge with team members. He was a very active member of the patient care team, and with his strong communication skills, he was able to work well in coordinating patient care with consultants.

In the small group preceptor sessions, the preceptor noted that Robert was very thorough and well thought out in his discussion of cases. He volunteered to do extra presentations, demonstrating his enthusiasm for learning and teamwork. He got along with team members very well and was very professional. He continued to show improvement in his presentations throughout the clerkship period.

Robert satisfactorily completed all the required elements for the clerkship. He passed the Final Essay exam and the NBME subject exam.

At the end of the clerkship, Robert was performing at the level of an interpreter for the Internal Medicine core conditions.

Attending verbatim:

Robert demonstrated enthusiasm for learning Medicine. He took care of a very complicated patient where he was very helpful in getting all the outside records, executing the plan from multiple sub specialty recommendations and doing a very good job at analyzing all the data to come up with a very good differential diagnosis and plan of care. He had good bedside manners, good communication skills, wrote good notes, asked very smart questions on rounds.

Exceptional ability to question clinical routines to engage himself and others in EBM.

He is a very motivated student. Keep working on integrate the basic medical knowledge with real clinical practice.

Resident verbatim:

Rob is very proactive in his learning, readily and frequently reads up on his patients, looks up medical literature and shares new knowledge with the team. He has a good handle on his sick patients and has a solid knowledge base which allows him to formulate solid assessment and plans. He is also very engaged in the rest of the team's patients and frequently asks intelligent and great questions, and is always willing to help out.

Wow he has good differentials and is thinking outside the box.

Intern verbatim:

High intellectual curiosity- continue to keep asking questions. For differentials, always address biggest issues first, zebras second. For presentations, keep it focused and hit the main points, then at the end can bring up additional thoughts. High fund of knowledge for current level, continue reading!

Robert did a great job during this rotation. He was very active in the care of his patients, checking in on them often and gathering thorough histories. He demonstrated significant dedication to his patients and was always asking great questions. He was always willing to help out the team and offer his assistance.

Patient care: very good

Medical knowledge: very good

Practice-based learning: very good - excellent

Communication skills: very good

Professionalism: very good

System based learning: very good

NARRATIVE DESCRIPTION OF PRACTICAL (H&P) EXAM PERFORMANCE:

Robert had an overall excellent performance on his observed bedside history and physical examination. He was very respectful of the patient, expressed empathy where appropriate and needed. His data gathering was very organized and followed the appropriate sequence, and was sufficiently detailed. The physical exam was also very thorough and mostly accurate and elevated subtle findings. Robert's final formulation of differential diagnosis and management plan was very 'impressive' - it was appropriately broad, and the management plan was above expected for the level of training

Interview Style and Communications Skills: excellent

Data Gathering Ability: excellent

Physical Exam: excellent

Formulation and Write Up: outstanding

Course Name: "Primary Care"

Robert is an engaged medical student who shows significant motivation to learn and improve. He has a professional appearance and shows good history taking and physical exam skills. He continued to progress over the weeks in his learning and knowledge levels, especially for conditions frequently seen in a primary care setting. He used cases seen in clinic to review diagnoses, clinical guidelines and evidence-based treatment plans. He also began to engage in more critical thinking, planning and documenting involved in medical decision making as the rotation progressed. He would create differential diagnoses for presenting symptoms and use critical thinking to narrow the most likely diagnoses. He was reliable and willing to help with patient care. He will need to continue to get clinical exposure and experience for continued improvement and honing of his skills. Overall, he is functioning at the interpreter level.

Course Name: "Surgery"

Robert is a mature student who has drive and uses every opportunity as a chance to learn something. He is engaged, enthusiastic and interested. He is thoughtful and actively sought out ways to contribute to the team. Without being directed, he met patients in preop, ensured consents were filled out appropriately, and updated the team with patients' progress to the OR. In the OR, Robert looked for ways to help. When cases ran late, he insisted on staying and finishing with the team. He routinely demonstrated great preparation and breadth of reading. He exhibits an advanced understanding of surgery for his level and consistently portrays a natural sense of curiosity, which is apparent in his thoughtful questions. He completed thorough histories and physicals, and performed comprehensive yet succinct presentations with complete plans of treatment. He is able to synthesize information at a higher level than many of his peers. He would make a strong general surgery resident if that is the path he ultimately chooses.

Course Name: "Anesthesiology"

Robert was an excellent student and did a great job on his anesthesia rotation. He showed upon time and was always eager to learn. He is inquisitive – asks relevant and high-level questions, active listening, and has a strong knowledge base. Robert pays attention to detail, and was an important part of the anesthesia team. He will do well in whatever field he chooses to pursue. Good job, and continue to learn!

Course Name: "Emergency Medicine"

This course is graded pass/fail only. During the two-week rotation, Robert saw a variety of patients and was involved with performing several procedures. In procedure lab, he was able to demonstrate proper techniques in laceration repair, bag mask ventilation, and endotracheal intubation. During his two-week rotation, Robert was super inquisitive. He asked great questions and incorporated feedback. He also took the initiative to look up information on interesting cases. Robert was very eager to see patients and was very helpful with their families and was very good with follow-up as well. Overall Robert was a pleasure to work with; he will be an outstanding resident in whatever field he chooses.

Course Name: "Neurology"

Robert did a good job on Neurology. Smart, good knowledge base. Great advocate for his patients, goes the extra mile. Spent a lot of time with his patients. Would often text the team later after leaving the hospital when he thought more about a patient or to share more ideas. Helpful to team (e.g. called a German translator without being asked). Thinks outside the box.
 Recommendations: Learn ideal times to ask questions. Try to focus on the big picture - at times would focus on aspects of the patient (could be imaging or psychosocial issues) that were not the most important issues to the case, but clinical judgment will likely come with more experience. Continue to be more receptive to feedback.
 Submitted write-ups were brief.
 Write-up #1 8.25/10
 Write-up #2 8.25/10
 Clinical 37.25/50
 NBME 77%
 OSCE 76.7%
 Final Clerkship Score 76/100 Pass

Course Name: "Radiology"

Mr. Robert Sampson has successfully completed his rotation in the Department of Radiology at Stony Brook Medicine University Hospital. Despite the challenges that COVID 19 has presented, Robert submitted a well-illustrated power point presentation on Gallstone Pancreatitis including a discussion of cholelithiasis, acute cholecystitis and secondary pancreatitis with imaging examples on radiography and US. His interesting case of Tracheoesophageal Fistula on radiographs including illustrations of its types and a table of the findings of VACTERL. In lieu of a final exam, Robert submitted a thorough paper on Pulmonary Embolism Radiology and Management, which included the Modified Wells Criteria with excellent representative abnormalities on chest radiography with classic signs, and findings on V/Q scan and pulmonary CTA.

Course Name: "Psychiatry"

Robert Simson completed this rotation at Nassau University Medical Center (NUMC). He completed all the assignments and questions. As per his preceptor in the inpatient unit, it was evident that he was very dedicated in the field of medicine. He was a highly motivated and compassionate student. He illustrated himself in his desire to assure he was exposed to as much clinical situation as possible. He demonstrated good basic psychiatric knowledge. By the end of this rotation, he demonstrated competency in history taking, mental status examination, evaluation of suicide risk and alcohol and drug use. Overall, Robert had good clinical performance during this rotation.

Course Name: "Ob/Gyn"

Punctual, conscientious, attentive, professional. Team player, showed interest in cases, asked questions about interesting cases. Seemed selfless and empathetic. Researched his answers. Patient care skills were strong, demonstrating complete plans, thorough differentials and well organized notes. His behavior modeled reliability, collegiality and integrity. He consistently sought out and accepted responsibility.

Course Name: "Pediatrics"

Mr. Robert Sampson was a clinical clerk in the Department of Pediatrics from May 31- July 11, 2021. The following comments were provided in response to request for evaluation of Mr. Sampson by supervising faculty and residents: (1) "Great rotation in the newborn nursery! Very intellectually curious. Asks great questions. Reads about patients' issues and problems in more depth to increase his fund of knowledge". (2) "Robert consistently took the initiative to seek out tasks and additional learning opportunities, at times going above and beyond expectations. Examples include following up on radiology results, which resulted in early identification of a venous sinus thrombosis in a patient that was later transferred to the ICU. Always thinking of a broad differential for patients and actively participating at evening signout". (3) "Robert was an asset to our inpatient team. He is extremely dedicated to his patients and went above and beyond in securing a much needed intervention for one patient in particular. He demonstrates a high level of intellectual curiosity and his case presentations were consistently reflective of a comprehensive thought process".
 Mr. Sampson's written and oral case discussions reflected evidence of his ability to use scientific literature effectively to enhance his medical knowledge. His overall clinical score was 35.4/50, reflecting his ability to function as an "Interpreter/Manager" in patient care. He has earned a grade of "Pass" in the Clerkship in Pediatrics with a total score of 78.9 out of 100 possible points.